

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SAFA GELARDI and IME COMPANIONS, LLC,

Third-Party Plaintiff,

Docket: 1:22-CV-1032 (PKC)(JRC)

- against -

CARLOS ROA

Third- Party Defendant.

Leo Shalit, Esq., an attorney admitted to practice law before the Courts of the State of New York affirms the following, pursuant to CPLR 2106, under the penalties of perjury:

DECLARATION PURSUANT TO 28 USC 1746

1. I am a member of Leo Shalit, P.C., counsel for Defendant CARLOS ROA. (“Defendant”) in the within matter and make this Affirmation in support of the application seeking an Order discharging this law firm as counsel for Defendant and for such other relief as may be just and proper.
2. My office has represented Mr. Carlos Roa from the beginning of the Third Party Action. In furtherance of such representation, I have interposed an Answer, engaged in Motion Practice and have represented the Client at court conferences.
3. At present, Fact Discovery is due to be completed on April 30, 2024. There are no motions currently pending as they pertain to the Third-Party Defendant. There are no court dates pending for the case.
4. To advance this motion with substance, counsel makes a limited disclosure to the Court pursuant to the Rule 1.16 of the New York Rules of Professional Conduct.

5. At present time, there is a permanent and irreparable breakdown in the Attorney-Client Relationship and Counsel is opposed to any continued representation of the Client herein.

6. Specifically, this firm is unable to effectively represent the Defendant as there is a fundamental disagreement on the means and methods by which to defend and finalize this matter. There is also a fundamental disagreement about what the evidence shows and what this could potentially mean for my client. Attorney advice has not been followed and the relationship is no longer viable.

7. Counsel has previously advised the Court of this issue, in the presence of the client and the Court, during the Settlement Conference on January 24, 2024. Since the conference, the conflict has actualized further and has increased. Counsel is opposed to the continued representation herein.

8. Additionally, the undersigned and the Defendant have had a material breakdown as to the means and methods of how the matter should be finalized and, as a result, for this additional reason, the attorney-client relationship has eroded and is otherwise irreparably damaged.

9. No further representation is appropriate herein. I am constrained, based on the cannons contained in the Code of Professional Conduct, from commenting any further with regard to specifics of the deterioration of this firm's relationship with Third Party Defendant but can file a supplement declaration *under seal* should the Court require it.

10. It is my opinion that the relationship is at such a state that it is not possible for this firm to continue in the effective representation of the client and on the foregoing, it is respectfully requested that the Court issue an Order relieving my firm, Leo Shalit, P.C., as

counsel for Defendant

11. Courts have consistently granted counsel's motion to withdraw in circumstances where the client has not cooperated with the attorney. *See, e.g., Dillon v. Otis Elevator Co.*, 22 A.D.3d 1, 4-5, 800 N.Y.S.2d 385, 387-88 (1st Dep't 2005) (affirming withdrawal where client frustrated attorney's ability to defend case); *Bok v. Werner*, 9 A.D.3d 318, 780 N.Y.S.2d 332 (1st Dep't 2004) (granting withdrawal where client failed to respond to any communication from counsel).

12. The instant application was made without delay as soon as these issues arose within the litigation.

13. My firm is not asserting a charging or retaining lien in this matter.

14. Based on the facts and circumstances herein, it is respectfully submitted that the instant application should be granted in all respects.

15. There are currently no pending motions.

16. No prior applications have been submitted for the relief sought herein.

WHEREFORE, it is respectfully requested that the instant motion be granted in all respects, together with such other and further relief as to this Court seems just and proper.

Dated: February 6, 2024

/s/ Leo Shalit
Leo Shalit, Esq

Sworn to and Acknowledged 7 day
of February 2024

NOTARY PUBLIC

